

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4195/1dn
MGG:nwn:ph

February 12, 2010

1. Please review this draft very carefully. Pursuant to my conversation with Jay, I have created new permit provisions for just the operation of a motor vehicle on the exposed bed of an outlying water, instead of requiring a person to get one of the existing individual permits or to seek authorization under one of the existing general permits since I did not think any of the existing permitted activities (placing structures and deposits, building bridges, withdrawing water from navigable waters, enlargement of waterways, changing of stream courses) really "fit". The only one that did seem relevant was the contracts for removal of material that, although they are contracts, are treated like permitted activities. See s. 30.20.

In creating these new provisions as to general and individual permits, I chose which provisions under ss. 30.206 and 30.208 that I thought worked with the concept. Please review the draft and ss. 30.206 and 30.208 to see how they interrelate.

Please note that the provisions in this draft contain deadlines for determinations by DNR. You may wish to change these time frames. Also note that under current law general permits must be promulgated by rule, and I included that requirement in this draft. See 30.206 (1) (a) in current law and s. 30.29 (3m) (b). Promulgation of rules takes time. You may wish to exempt the general permit in this draft from the rule-making process, although I think that would be unusual. Or you may wish to require that DNR promulgate the mandatory general permit under s. 30.29 (3m) (b) 1. as an emergency rule.

2. I did not include the procedure that allows a person to get DNR to determine whether an activity is exempt before starting the activity since this concept was not included in the drafting instructions I received. This is found in current law in provisions dealing with permits for placing structures and deposits (s. 30.12 (2r)), construction of bridges (s. 30.123 (6r)), and removal of material from beds of navigable waters (s. 30.20 (1r)). Let me know if you wish to include this procedure.

3. Note that the language in this draft relating to inspections varies somewhat from the drafting instructions. The drafting instructions do not require an on-site visit under s. 30.29 (3m) (c) (intro.), but I included this requirement because it exists in current statutes for other permits. See ss. 30.12 (2m) (intro.), 30.123 (6m) (intro.), and 30.20 (1m) (intro.).

4. The language under s. 30.29 (3m) 2. and 3., which is based on the drafting instructions, varies somewhat with the corresponding language under current law. The greatest difference is that s. 30.29 (3m) (c) 2. has the limiting phrase “in navigable waters.” In reviewing these provisions, you should compare s. 30.29 (3m) (c) 2. and 3. with ss. 30.12 (2m) (a) and (c), 30.123 (6m) (a) and (c), and 30.20 (1m) (a) and (c).
5. As to the fee issue, aquatic plant management permit fees will still apply. They are promulgated by rule. See s. 23.24 (3) (c). Also, DNR has promulgated rules to issue permits for the transportation, possession, and introduction of invasive species. However, DNR apparently does not charge a fee for these permits and it is questionable whether DNR would have the authority to do so.
6. Note that the mandatory general permit under s. 30.29 (3m) (b) 1. applies to all outlying waters. If that is not your intent, you need to look at the definition of “outlying waters” in s. 29.001 (63) and tell me which waters you would like listed.
7. Do you want a delayed effective date for all or part of this bill?

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215